IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1367 OF 2003

IN

ARBITRATION PETITION NO.287 OF 2005

Mr Dilip B. Seth

Prop. of M/s S.K. Enterprises ... Petitioner

v/s

The General Manager,

Western Railway ... Respondent

Ms Indira Reddy i/b M/s Sunil and Co. for Petitioner.

Mr Suresh Koma for Respondent.

CORAM : D.K. DESHMUKH J.

DATE : 13TH SEPTEMBER 2005.

P.C. :-

1. This is a motion taken out by the original petitioner for restoration of notice of motion No.3596 of 2003 which was dismissed for default. The leaned counsel appearing for respondent points out that there is no use restoring notice of motion No.3596 of 2003 which was taken out for condonation of delay in filing arbitration petition. The learned counsel points out that the petition itself is not maintainable because in the petition the General Manager, Western Railways has been joined as respondent who was not a party to the arbitration. The contract between the parties was signed on behalf of the Railways by the Deputy Controller of Stores (BM) and it is this authority which was before the Arbitrator. The General Manager who has been joined as respondent, has referred the dispute to the Arbitrator. The learned counsel has relied on a judgment of the Supreme Court in the case of Union of India v/s Tecco Trichy Engineers and Contractors, reported in 2005 AIR SCW 1635. I have heard learned counsel appearing for the petitioner. She concedes that before the Arbitrator, the Deputy Controller of Stores (BM) was representing Railways. She is not in a position to explain as to how arbitration petition can

be filed against the General Manager, Western Railways who had not signed the contract between the parties and who was not representing the Railways before the Arbitrator. The Supreme Court in paragraphs 9 and 10 of the order has observed thus :-

> "9. In the context of a huge organisation like Railways, the copy of the award has to be received by the person who has knowledge of the proceedings and who would be the best person to understand and appreciate the arbitral award and also to take a decision in the matter of moving an application under sub-section (1) or (5) of section 33 or under sub-section (1) of section 34.
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> 10. In the present case, the Chief Engineer had signed the agreement on behalf of Union of India entered into with the respondent. In the arbitral proceedings the Chief Engineer represented the Union of India and the notices, during the proceedings of the Arbitration, were served on the Chief Engineer. Even the arbitral award clearly mentions that the Union of India is represented by Deputy Chief Engineer / Gaugue Conversion, Chennai. The Chief Engineer is

directly concerned with the Arbitration, as the subject matter of Arbitration relates to the department of the Chief Engineer and he has direct knowledge of the arbitral proceedings and the question involved before the arbitrator. The General Manager of the Railways has only referred the matter for arbitration as required under the contract. He cannot be said to be award of the question involved in the arbitration nor the factual aspect in detail, on the basis of which the arbitral tribunal had decided the issue before it unless they are all brought to his notice by the officer dealing with that arbitration and who is in-charge of those proceedings. Therefore, in our opinion, service of arbitral award on the General Manager by way of receipt in his inwards office cannot be taken to be sufficient notice so as to activate the Department to take appropriate steps in respect of and in regard to the award passed by the arbitrators to constitute starting point of limitation for the purposes of section 34(3) of the Act. The service of notice on the Chief Engineer on 19-3-2001 would be the starting point of limitation to challenge the award in the Court."

. It is thus clear that as the petitioner has not joined property party as respondent, the petition itself is not maintainable and therefore, no useful purpose will be served by considering an application for condonation of delay in filing petition. Notice of motion is dismissed. No order as to costs.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary of this Court as true copy.

. Certified copy expedited.